

as provided herein, toward the payment of Accounts Receivable owing to Seller. If any such advertiser shall, in good faith, dispute the amount Seller claims is owed to it, Buyer shall promptly so notify Seller in writing and return such account to Seller, and Buyer shall have no further responsibility for collection for such account. Upon notification and return to Seller of any account as herein provided, Buyer thereafter may deal with such advertiser as if it were not indebted to Seller and without the obligation of applying funds subsequently received from such advertiser to the account of Seller. All payments by Buyer to Seller pursuant hereto shall be the gross amounts collected; payment of agency and sales commissions respecting the same shall be the responsibility of Seller.

Section 7 Special Covenants of Buyer and Seller

Buyer and Seller each agree as follows:

7.1 FCC Consent. The assignment of the FCC Licenses in connection with the purchase and sale of the Stations Assets shall be subject to the prior Consent of the FCC, which Consent shall have become a Final Order. At the direction of the presiding administrative law judge in EB Docket No. 01-39 or other member of the FCC staff, the parties shall promptly prepare and file an appropriate application for FCC Consent. The parties shall prosecute said application with all reasonable diligence and otherwise use their reasonable best efforts to obtain a grant of the application as expeditiously as practicable and shall oppose any objections to the grant of the application for FCC Consent. Each party agrees to comply with any condition imposed on it by the FCC Consent. If the Closing shall not have occurred within the original period of the FCC Consent, and neither party shall have terminated this Agreement, the parties shall jointly request an extension of the effective period of the FCC Consent, provided that no extension of the FCC Consent shall limit the exercise by either party of its rights to terminate this Agreement under Section 14.

7.2 Bulk Sales Law. Buyer hereby waives compliance by Seller with the provision of the U.S. Virgin Islands Bulk Sales Law, if applicable, and Seller warrants and agrees to pay and discharge when due all claims of creditors which could be asserted against Buyer by reason of such noncompliance to the extent that any such liabilities arise before the Closing, and agrees to protect, defend, hold harmless and indemnify Buyer from and against any and all claims and demands that may arise on or after the Closing Date pursuant to the procedures set forth in Section 16 hereof.

7.3 Confidentiality. Except as may be required by a court order, governmental investigation or regulation, Buyer and Seller each shall keep confidential all information obtained by it with respect to the other in connection with this Agreement, and if the transactions contemplated hereby are not consummated for any reason, each shall return to the other, without retaining a copy thereof, any schedules, documents or other written information obtained from the other in connection with this Agreement and the transactions contemplated hereby.

7.4 Cooperation. The parties hereto shall cooperate fully with each other in fulfilling their respective obligations under this Agreement, including using their respective commercially reasonable best efforts to obtain the required Consents. Notwithstanding the foregoing, Seller and Buyer shall have no obligation (i) to expend funds to obtain any Consents except for the FCC Consent and Seller's obligation to cure any default of Seller under any License or (ii) to agree to any adverse change in any License or Assumed Contract in order to obtain a Consent required with respect thereto.

7.5 Ensure Closing. Seller and Buyer each shall use its commercially reasonable best efforts to ensure that the transactions contemplated hereby shall be consummated in accordance with the terms of this Agreement.

7.6 Further Assurances. Seller and Buyer shall cooperate and take such actions, and execute such other documents, at Closing or subsequently, as may be reasonably requested by the other in order to carry out the provisions and purposes of this Agreement.

Section 8 **Conditions Precedent to Buyer's Obligations**

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at Closing, of each of the following conditions, any of which Buyer may waive in writing:

8.1 Representations, Warranties and Covenants. All representations and warranties of Seller made in this Agreement, or in any exhibit, schedule, certificate or other document delivered pursuant hereto, shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of that date, except for changes contemplated by this Agreement or changes that are not materially adverse and arise after the date hereof in the ordinary course of the business of the Stations. All of the terms, covenants and conditions to be complied with and performed by Seller on or prior to the Closing Date shall have been complied with or performed in all material respects.

8.2 FCC Consent. The FCC Consent shall have been granted.

8.3 Governmental Authorizations. Seller shall be the holder of all Licenses and there shall not have been any modification of any License that could have a material adverse effect on the Stations or the conduct of their business and operations. No proceeding shall be pending, the effect of which could be to revoke, cancel, fail to renew, suspend or modify materially and adversely any material Licenses or to deny the assignment thereof to Buyer.

8.4 Consents. All Consents for the Assumed Contracts listed on Schedule 3.3 shall have been obtained and delivered to Buyer without any adverse change in the terms or conditions of any Assumed Contract.

8.5 Authority to Operate from Current Studio and Transmitter Sites. Buyer shall have obtained from the owner of the Stations' studio and transmitter sites all necessary consents, leases or other authority for the continued operation of the Stations' facilities from such sites from and after the Closing Date.

8.6 No Material Adverse Change. Between the date of this Agreement and the Closing Date, there shall have been no material adverse change in the Tangible Personal Property, or Licenses of the Stations, including any damage, destruction, or loss affecting any Stations Assets in any material respect. Between the date of this Agreement and the Closing Date, there shall have been no material adverse change in the cash flow of the Stations.

8.7 Deliveries. Seller shall have made or stand willing to make all the deliveries to Buyer set forth in Section 10.2 hereof.

8.8 Discharge of Liens. Seller shall discharge all Liens or other liabilities pertaining to the Stations Assets and shall provide Buyer with documentation thereof.

Section 9

Conditions Precedent to Seller's Obligations

The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at Closing, of each of the following conditions, any of which Seller may waive in writing:

9.1 Representations, Warranties and Covenants. All representations and warranties of Buyer made in this Agreement, or in any exhibit, schedule, certificate or other document delivered pursuant hereto, shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of that date, except for changes contemplated by this Agreement. All of the terms, covenants and conditions to be complied with and performed by Buyer on or prior to the Closing Date shall have been complied with or performed in all material respects.

9.2 FCC Consent. The FCC Consent shall have been granted.

9.3 Deliveries. Buyer shall have made or stand willing to make all the deliveries set forth in Section 10.3 hereof.

Section 10

Closing and Closing Deliveries

10.1 Closing. The closing of the transaction contemplated herein (the "Closing") shall take place at the Law Offices of Kevin A. Rames, P.C. located at 2111 Company Street, Suite 3, Christiansted, St. Croix, U.S. Virgin Islands 00820 at 10:00 a.m. on the tenth business day following that date on which the FCC Consent becomes a Final Order. Notwithstanding the foregoing, at Buyer's sole determination, the Closing may take place on any date between the date of the issuance of FCC Consent and the date on which the FCC Consent becomes a Final Order, so long as Buyer provides two weeks advance written notice of such earlier Closing Date to Seller.

10.2 Deliveries by Seller. Prior to or on the Closing Date, Seller shall deliver to Buyer the following, in form and substance reasonably satisfactory to Buyer and its counsel:

- (a) Transfer documents consisting of duly executed bills of sale, assignments and other transfer documents which shall be sufficient to vest good and marketable title to the Stations Assets in the name of Buyer, free and clear of all Liens and other liabilities;
- (b) An executed copy of any instrument evidencing receipt of any Consent;
- (c) A certificate dated as of the Closing Date executed on behalf of Seller by an officer of Seller, certifying (1) that the representations and warranties contained in this Agreement are true and complete in all material respects as of the Closing Date as though made on and as of that date; and (2) that Seller has in all material respects performed and complied with all of its obligations, covenants, and agreements set forth in this Agreement to be performed and complied with on or prior to the Closing Date;
- (d) Copies of all Licenses, Assumed Contracts, engineering records, plans, projections, blueprints, and all files and records used by Seller in connection with the business and operations of the Stations;
- (e) A certified copy of resolutions of the shareholders and directors of Seller authorizing the transactions contemplated by this Agreement; and,
- (f) Such other instruments, documents and certificates of officers as reasonably may be requested by Buyer to consummate this Agreement and the transactions contemplated hereby.

10.3 Deliveries by Buyer. On the Closing Date, Buyer shall deliver to Seller the following:

- (a) The Purchase Price as adjusted pursuant to Section 2.4 and less the amount of legal fees owed by Seller to Seller's counsel, which amount shall be deducted from the Purchase Price and paid by Buyer to Seller's counsel pursuant to written instructions signed by Seller and Seller's counsel and delivered to Buyer at least two (2) business days prior to the Closing Date;
- (b) Assumption agreements, in form and substance reasonably satisfactory to Seller and its counsel, pursuant to which Buyer shall assume and undertake to perform Seller's obligations under the Licenses and Assumed Contracts insofar as they relate to the time on and after the Closing Date or arise out of events occurring on or after the Closing Date;
- (c) A certificate dated as of the Closing Date executed on behalf of Buyer by an officer of Buyer, certifying (1) that the representations and warranties contained in this Agreement are true and complete in all material respects as of the Closing Date as though made on and as of that date; and (2) that Buyer has in all material respects performed and complied with all of its obligations, covenants, and agreements set forth in this Agreement to be performed and complied with on or prior to the Closing Date; and

- (d) A certified copy of resolutions of the shareholders and directors of Buyer authorizing the transactions contemplated by this Agreement, which shall be supported by a certificate of incumbency and corporate ownership; and,
- (e) Such other instruments, documents and certificates of officers as reasonably may be requested by Seller to consummate this Agreement and the transactions contemplated hereby.

Section 11

Transfer Taxes, Fees and Expenses

11.1 Transfer Taxes. Seller and Buyer shall share equally the cost of any transfer taxes and recording fees assessed or levied in connection with the sale of the Stations Assets to Buyer. Except as otherwise expressly provided herein, all other expenses incurred in connection with this transaction shall be borne by the party incurring same.

11.2 Governmental Filing or Grant Fees. Any filing fees imposed by the FCC shall be paid by Buyer. Any filing fees or grant fees imposed by any other governmental authority, the consent of which is required to the transactions contemplated hereby, shall be borne by Seller.

Section 12

Risk of Loss

The risk of any loss, damage or destruction to any of the Stations Assets to be transferred hereunder from fire or other casualty shall be borne by the Seller at all times prior to the Closing. Upon the occurrence of any material loss or damage to any material property or assets to be transferred hereunder as a result of fire or other casualty prior to Closing, Seller shall promptly notify Buyer of same in writing, stating the extent of such loss or damage incurred, the cause thereof if known and the extent to which restoration, replacement and repair of the Stations Assets lost or destroyed will be reimbursed under any insurance policy with respect thereto. Seller shall promptly restore, replace or repair, if possible, any lost or destroyed Stations Assets prior to the Closing Date, and Buyer and Seller agree that the Closing Date will be extended, if necessary, for a period of up to ninety (90) days to accomplish restoration, replacement or repair of the damaged or lost Stations Assets. If the Stations Assets have not been restored, replaced or repaired and the Stations' normal and usual transmission resumed within the ninety (90) - day period specified above, Buyer may terminate this Agreement forthwith without any further obligation hereunder by written notice to Seller. Alternatively, Buyer may, at its option, proceed to close this Agreement and complete the restoration and replacement of the Stations Assets at Buyer's expense after the Closing Date, in which event Seller promptly shall deliver to Buyer following receipt thereof all insurance proceeds received prior to or after the Closing in connection with such damage or destruction of the Stations Assets, or, if no such insurance proceeds are to be received by Seller, the Purchase Price shall be adjusted downward at the Closing. Notwithstanding the foregoing, Buyer may terminate this Agreement forthwith by written notice to Seller if (i) either of the Stations ceases signal transmission for a period of seven (7) consecutive days or (ii) either of the Stations fails to operate at its full, authorized power for a period in excess of ten (10) consecutive days.

Section 13
Status of Employees

13.1 Employment Relationship. Until the Closing Date, all Stations Employees remain the employees of the Seller and Seller shall have full authority and control over Stations Employees and their actions, and Buyer shall not assume the status of an employer or a joint employer of, or incur or be subject to any liability or obligation of an employer with respect to, any Stations Employees unless and until actually hired by Buyer. Seller shall be solely responsible for any and all liabilities and obligations Seller may have to Stations Employees, including without limitation compensation, severance pay, and accrued vacation time and sick leave.

13.2 Buyer's Right to Employ. Seller agrees that upon Closing, Buyer may extend an offer of employment to any Stations Employees. With Seller's consent, Buyer may communicate with Stations Employees concerning the possibility of their employment by Buyer after Closing, provided that such communication does not occur before the FCC Consent has issued.

Section 14
Termination

14.1 Termination by Seller. Seller may terminate this Agreement and abandon the sale of the Stations Assets if Seller is not then in material default hereof, upon written notice to Buyer, upon the occurrence of any of the following:

- (a) If the Closing shall not have occurred by the fifth anniversary of the filing of the application for FCC Consent;
- (b) If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree or order that would prevent or make unlawful the Closing;
- (c) If Buyer has failed to cure or commenced to cure any material breach of any of its representations, warranties or covenants under this Agreement within twenty (20) days after Buyer's receipt of written notice of such breach from Seller; or
- (d) If on the date that would otherwise be the Closing Date any of the conditions precedent to the obligations of Seller set forth in this Agreement have not been satisfied or waived in writing by Seller.

14.2 Termination by Buyer. In addition to Buyer's right to terminate this Agreement under Section 12 hereof, Buyer may terminate this Agreement and abandon the purchase of the Stations Assets if Buyer is not then in material default hereof, upon written notice to Seller, upon the occurrence of any of the following:

- (a) If the Closing shall not have occurred by the fifth anniversary of the filing of the application for FCC Consent;

- (b) If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree or order that would prevent or make unlawful the Closing;
- (c) If Seller has failed to cure or commenced to cure any material breach of any of its representations, warranties or covenants under this Agreement within twenty (20) days after Seller's receipt of written notice of such breach from Buyer; or
- (d) If on the date that would otherwise be the Closing Date any of the conditions precedent to the obligations of Buyer set forth in this Agreement, have not been satisfied or waived in writing by Buyer.

14.3 Rights on Termination. If this Agreement is terminated pursuant to 14.1(a) or (b) or 14.2 (a) or (b) and neither party is in material breach of any provision of this Agreement, neither party shall have any further liability with respect to the purchase and sale of the Stations Assets. If this Agreement is terminated by Buyer due to Seller's material breach of this Agreement, Buyer may sue at law for damages or, at its sole discretion, seek specific performance of this Agreement pursuant to the provisions of Section 18 hereof. If this Agreement is terminated by Seller because of Buyer's failure to close the transaction contemplated by this Agreement, Buyer shall pay Seller liquidated damages in an amount equal to Seller's reasonable and prudent, documented out-of-pocket expenses, including reasonable attorneys fees, incurred in connection with the negotiation of this Agreement and the filing of the application for FCC Consent referenced in Section 7.1, which amount shall constitute full payment and the exclusive remedy for any damages suffered by Seller by reason of Buyer's failure to close the transaction contemplated by this Agreement. Buyer and Seller agree in advance that Seller's actual damages in the event of Buyer's failure to close would be difficult to ascertain and that Buyer's reimbursement of Seller's costs as described in the foregoing sentence constitutes fair and equitable liquidated damages for said material breach by Buyer.

Section 15

Survival of Representations, Warranties and Covenants

All representations, warranties and covenants contained in this Agreement shall be deemed continuing representations, warranties and covenants and shall survive the Closing for a period of eighteen (18) months. Any investigations by or on behalf of any party hereto shall not constitute a waiver as to enforcement of any representation, warranty, or covenant contained in this Agreement. No notice or information delivered by Seller shall affect Buyer's right to rely on any representation or warranty made by Seller or relieve Seller of any obligations under this Agreement.

Section 16

Indemnification

16.1 Indemnification by Seller. Notwithstanding the Closing, and regardless of any investigation made at any time by or on behalf of Buyer or any information Buyer may have, Seller hereby agrees to indemnify, defend and hold Buyer harmless from and against any and all losses, costs, damages, liabilities, claims, actions, and expenses (including reasonable legal fees and other expenses incident thereto) of every kind, nature or description ("Damages").

arising out of or in connection with: (a) the material breach of any representation or warranty of Seller set forth in this Agreement (including the Exhibits) or in any Schedule or certificate delivered to Buyer pursuant hereto; (b) the material nonfulfillment of any of Seller's covenants or other agreements contained in or arising out of this Agreement or the transactions contemplated hereby; (c) the failure of the parties to comply with the provisions of any bulk sales law applicable to the transfer of the Stations Assets; or (d) the operation or ownership of the Stations prior to the Closing, including any liabilities arising under the Licenses or the Assumed Contracts which relate to events occurring prior to the Closing Date.

16.2 Indemnification by Buyer. Notwithstanding the Closing, and regardless of any investigation made at any time by or on behalf of Seller or any information Seller may have, Buyer hereby agrees to indemnify, defend and hold Seller harmless from and against any and all Damages arising out of, or in connection with: (a) the material breach of any representation or warranty of Buyer set forth in this Agreement (including the Exhibits) or in any Schedule or certificate delivered to Seller pursuant hereto; (b) the material nonfulfillment of any of Buyer's covenants or other agreements contained in or arising out of this Agreement or the transactions contemplated hereby; or (c) the operation or ownership of the Stations on and after the Closing, including any liabilities arising under the Licenses or the Assumed Contracts which relate to events occurring after the Closing Date.

16.3 Procedure for Indemnification. The procedure for indemnification shall be as follows:

- (a) The party claiming indemnification (the "Claimant") shall promptly give written notice to the party from which indemnification is claimed (the "Indemnifying Party") of any claim, whether between the parties or brought by a third party, specifying in reasonable detail the factual basis for the claim. If the claim relates to an action, suit, or proceeding filed by a third party against Claimant, such notice shall be given by Claimant within seven (7) days after written notice of such action, suit, or proceeding was given to Claimant, or the claim shall be barred.
- (b) With respect to claims solely between the parties, following receipt of written notice from the Claimant of a claim, the Indemnifying Party shall have thirty (30) days to make such investigation of the claim as the Indemnifying Party deems necessary or desirable. For the purposes of such investigation, the Claimant agrees to make available to the Indemnifying Party and/or its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnifying Party agree at or prior to the expiration of the thirty (30) day period (or any mutually agreed upon extension thereof) to the validity and amount of such claim, the Indemnifying Party shall immediately pay to the Claimant the full amount of the claim. If the Claimant and the Indemnifying Party do not agree within the thirty- (30) day period (or any mutually agreed upon extension thereof), the Claimant may pursue available remedies pursuant to the provisions of Section 17.

- (c) With respect to any claim by a third party as to which the Claimant is entitled to indemnification under this Agreement, the Indemnifying Party shall have the right at its own expense, to participate in or assume control of the defense of such claim, and the Claimant shall cooperate fully with the Indemnifying Party, subject to reimbursement for actual out-of-pocket expenses incurred by the Claimant as the result of a request by the Indemnifying Party. If the Indemnifying Party elects to assume control of the defense of any third-party claim, the Claimant shall have the right to participate in the defense of such claim at its own expense. If the Indemnifying Party does not elect to assume control or otherwise participate in the defense of any third party claim, it shall be bound by the results obtained by the Claimant with respect to such claim, *provided however*, that Claimant may not enter into any settlement of such a claim without the prior consent of the Indemnifying Party.
- (d) If a claim, whether between the parties or by a third party, requires immediate action, the parties will make every effort to reach a decision with respect thereto as expeditiously as possible.
- (e) The indemnification rights provided in this Section 16 shall extend to the members, managers, shareholders, directors, officers, employees and representatives of any Claimant although for the purposes of the procedures set forth in this Section 16 any indemnification claims by such parties shall be made by and through the Claimant.

16.4 Survival of Indemnification Rights. The indemnification rights provided in Section 16 shall expire eighteen (18) months following the Closing.

16.5 Exclusive Remedy. Except as provided in Sections 14.3 and 18.1 hereof, each party acknowledges and agrees that its sole and exclusive remedy with respect to any and all claims relating to the subject matter of this Agreement shall be pursuant to the indemnification provisions set forth in this Section 16.

Section 17

Resolution of Disputes

17.1 Arbitration. Any dispute, controversy or claim arising out of or relating to this Agreement or any agreement entered into pursuant hereto or the performance by the parties of the terms hereof or thereof shall be settled by binding arbitration held in Christiansted, St. Croix, U.S. Virgin Islands, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, except as otherwise provided in this Section 17. Notwithstanding the foregoing, Buyer may, in its discretion, apply to a court of competent jurisdiction for the decree of specific performance pursuant to Section 18.1.

17.2 Arbitrators. If the matter in controversy (exclusive of attorneys fees and expenses) appears, as at the time of the demand for arbitration, to exceed \$50,000, then the panel to be appointed shall consist of three neutral arbitrators; otherwise, one neutral arbitrator.

17.3 Procedures; No Appeal. The arbitrator(s) shall resolve the dispute as expeditiously as practicable, and if reasonably practicable, within 120 days of the selection of the arbitrator(s). The arbitrator(s) shall give the parties written notice of the decision, with the reasons therefor set out, and shall have 30 days thereafter to reconsider and modify such decision if any party so requests within 10 days after the decision. Thereafter, the decision of the arbitrator(s) shall be final, binding and non-appealable with respect to all persons, including persons who failed or refused to participate in the arbitration process.

17.4 Authority. The arbitrator(s) shall have authority to award relief under legal or equitable principles, including interim or preliminary relief.

17.5 Entry of Judgment. Judgment upon award rendered by the arbitrator(s) may be entered in any court having in personam and subject matter jurisdiction. Seller and Buyer hereby submit to the in personam jurisdiction of the Federal and Territorial Courts for the purpose of confirming any such award and entering judgment thereon.

17.6 Confidentiality. All proceedings under this Section 17, and all evidence given or discovered pursuant hereto, shall be maintained in confidence by all parties.

17.7 Continued Performance. The fact that the dispute resolution procedures specified in this Section 17 shall have been or may be invoked shall not excuse any party from performing its obligations under this Agreement and during the pendency of any such procedures all parties shall continue to perform their respective obligations in good faith, subject to any rights to terminate this Agreement that may be available to any party.

17.8 Tolling. All applicable statutes of limitation shall be tolled while the procedures specified in this Section 17 are pending. The parties will take such action, if any, required to effectuate such tolling.

Section 18 **Other Provisions**

18.1 Specific Performance. The parties recognize that if, prior to Closing, Seller breaches this Agreement and refuses to perform under the provisions hereof, monetary damages alone may not be adequate to compensate Buyer for its injury. Buyer shall therefore be entitled to obtain specific performance of the terms of this Agreement. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is adequate remedy at law.

18.2 Attorney Fees. Should either party default in the performance of any of the terms or conditions of this Agreement, which default results in arbitration for damages, specific performance, or other permitted remedy, the prevailing party in the arbitration shall be entitled to its reasonable legal fees and expenses.

18.3 Benefit and Binding Effect. Neither party hereto may assign this Agreement without the prior written consent of the other party hereto; provided, however, that Buyer may assign its rights and obligations under this Agreement to a subsidiary or commonly controlled affiliate of Buyer without seeking or obtaining Seller's prior approval, so long as

Buyer guarantees the obligations of such affiliate, and Seller shall be permitted to transfer the Stations Assets prior to the Closing Date to any entity under common control with Seller, so long as such entity agrees to be bound by the terms and conditions of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

18.4 Governing Law. This Asset Purchase Agreement shall be governed, construed and enforced in accordance with the laws of the U.S. Virgin Islands, without regard to the choice of law provisions thereof.

18.5 Construction. The parties acknowledge and agree that this Agreement has been fully negotiated between them and shall not be interpreted or construed against the drafting party.

18.6 Notices. All notices, demands, requests or other communication required or permitted hereunder shall be in writing and sent by certified, express or registered mail, return receipt requested, postage prepaid, overnight air courier service, telecopier (fax) or personal delivery to the address specified below (or to such other address which a party shall specify to the other party in accordance herewith):

If to Seller: Family Broadcasting, Inc.
 P.O. Box 224469
 St. Croix, U.S. Virgin Islands 00882

If to Buyer: Caledonia Communication Corporation
 2111 Company Street, Suite 3
 St. Croix, U.S. Virgin Islands
 Fax: 340-773-7282

Notice shall be deemed to have been given on the date of personal delivery, the date set forth in the records of the delivery service, or on the return receipt.

18.7 Multiple Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

18.8 Entire Agreement. This Agreement, the Schedules and Exhibits hereto, and all documents and certificates to be delivered by the parties pursuant hereto, collectively represent the entire understanding and agreement between Buyer and Seller with respect to the subject matter hereof. This Agreement supersedes all prior memoranda and agreements between the parties hereto, and may not be modified, supplemented or amended, except by a written instrument signed by each of the parties hereto designating specifically the terms and provisions so modified, supplemented or amended.

18.9 Captions. The section captions and headings in this Agreement are for convenience and reference purposes only and should not affect in any way the meaning or interpretation of this Agreement.

18.10 Exclusive Dealings. Prior to Closing, for so long as this Agreement remains in effect, neither Seller nor any person acting on Seller's behalf shall solicit or initiate any offer from, or conduct any negotiations with, any person concerning the acquisition of the Stations, directly or indirectly, by any party other than Buyer or Buyer's permitted assignees.

18.11 Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (i) confer any rights or remedies on any person other than Seller, Buyer, and their respective successors and permitted assignees; (ii) to relieve or discharge the obligations or liability of any third party; or (iii) to give any third party any right of subrogation or action against either Seller or Buyer.

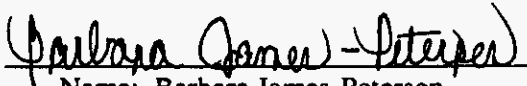
18.12 No Waiver. Unless otherwise specifically agreed in writing to the contrary: (i) the failure of either party at any time to require performance by the other of any provision of this Agreement shall not affect such party's right thereafter to enforce the same; (ii) no waiver by either party of any default by the other shall be taken or held to be a waiver by such party of any other preceding or subsequent default; and (iii) no extension of time granted by either party for the performance of any obligation or act by the other party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

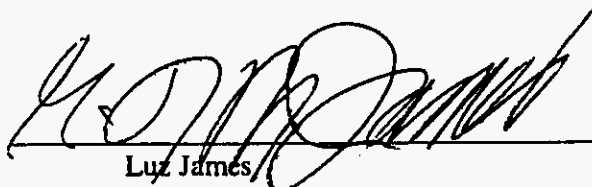
18.13 Severability. If any covenant or provision hereof is determined to be void or unenforceable in whole or in part, it shall not be deemed to affect or impair the validity of any other covenant or provision, each of which is hereby declared to be separate and distinct. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. If any provision of this Agreement is declared invalid or unenforceable for any reason other than overbreadth, the offending provision will be modified so as to maintain the essential benefits of the bargain between the parties hereto to the maximum extent possible, consistent with law and public policy.


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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

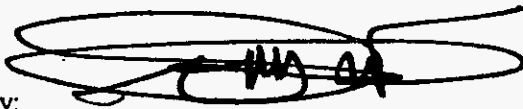
FAMILY BROADCASTING, INC.

By: 
Name: Barbara James-Petersen
Title: President


Luz James
Shareholder of Family Broadcasting, Inc.


Asta James
Shareholder of Family Broadcasting, Inc.

CALEDONIA COMMUNICATION CORPORATION

By: 
Name: Kevin A. Rames
Title: President

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Application for Assignment of Stations)	FCC File No. BALH-_____
WSTX(AM) and WSTX-FM, Christiansted,)	
U.S. Virgin Islands from)	
Family Broadcasting, Inc., Assignor, to)	
Caledonia Communications Corporation,)	
Assignee)	
)	
and)	
)	
Order to Show Cause Why the Licenses for)	EB Docket No. 01-39
Stations WSTX(AM) and WSTX-FM,)	
Christiansted, U.S. Virgin Islands, Should Not		
Be Revoked		

I. INTRODUCTION

The parties submit this application ("**Application**") to request Federal Communications Commission ("**FCC**" or "**Commission**") consent to assign the licenses for full-power commercial radio stations WSTX(AM) (Facility ID No. 20589) and WSTX-FM (Facility ID No. 20601), Christiansted, U.S. Virgin Islands (collectively, the "**Stations**"), from Family Broadcasting, Inc. ("**Family**") to Caledonia Communication Corporation ("**Caledonia**"). Family is currently a debtor in a Chapter 11 bankruptcy proceeding in the U.S. Virgin Islands.¹ Accordingly, as further set forth below, the parties respectfully request the Commission to grant this Application under the Commission's *Second Thursday Doctrine* and to stay the pending revocation proceeding pursuant to which the Commission has proposed to revoke the Station licenses from Family.²

Pursuant to the Commission's policy regarding the *Second Thursday* doctrine, assignment of the Stations to Caledonia is in the public interest. First, grant of the Application will protect the financial interests of Family's innocent creditors without enabling Family, or entities with an ownership interest in Family to obtain any financial benefit from the proposed assignment.

¹ See In Re Family Broadcasting, Inc., Case No. 1-05-00004-BM (Bankr. D. V.I.).

² See Initial Decision on Remand of Chief Administrative Law Judge Richard L. Sippel, FCC 05D-01 (ALJ rel. May 13, 2005). The parties also are filing in the pending revocation proceeding, EB Docket No. 01-39, a request for stay to enable the Commission to review the instant Application under the *Second Thursday* doctrine.

Second, grant of the Application will ensure that the Stations continue to serve the United States Virgin Islands. If the Station licenses are revoked, the Stations are likely to remain dark for several years, at minimum. Finally, grant of the Application is consistent with the Commission's policy of promoting localism in radio broadcasting because the proposed assignee is owned by two local Virgin Island residents who significantly contribute to the social and cultural life of the Virgin Islands.

II. BACKGROUND

A. Commission Proceedings

On February 13, 2001, the Commission released an Order to Show Cause and Notice of Opportunity for Hearing ("**Show Cause Order**") to commence a proceeding to determine whether the Station licenses held by Family should be revoked.³ In the Show Cause Order, the Commission alleged that Family, under the ownership and control of Mr. G. Luz A. James, violated certain Commission rules and policies in its operation of the Stations. Subsequently, on March 13, 2001, Family filed an application seeking Commission consent to transfer control of Family from Mr. James to his four children ("**Transfer Application**").⁴ On August 3, 2001, Administrative Law Judge Richard L. Sippel (the "**ALJ**") issued a summary decision ("**Summary Decision**") denying the transfer of control application and revoking the Station licenses.⁵ Based on an Admission of Facts and Genuineness of Documents submitted by Family, the ALJ held in the Summary Decision that "Family [was] not qualified to remain a Commission licensee and that its licenses should be revoked."⁶ The ALJ also dismissed Family's transfer of control application because, according to the ALJ, there was "a lack of sufficient evidence" that the proposed transferees, Mr. James' children, "will be independent of their parents' control or influence."⁷

³ Family Broadcasting, Inc., Order to Show Cause and Notice of Opportunity for Hearing, 16 FCC Rcd 4330 (2001) ("**Show Cause Order**"). On March 15, 2001, Family filed a petition for reconsideration of the Show Cause Order asking that the order be set aside, and on June 15, 2001 Administrative Law Judge Sippel dismissed the petition on procedural grounds. Family Broadcasting, Inc., Order, FCC 01-188, released June 15, 2001 (dismissing petition for reconsideration of the Show Cause Order filed by Family).

⁴ See FCC File No. BTC-20010315AAJ.

⁵ Family Broadcasting Inc., Summary Decision of Administrative Law Judge Richard L. Sippel, 6 FCC Rcd 15619, ¶ 4 (ALJ 2001) (noting that Family "cooperated fully in responding to an extensive set of requests for admissions").

⁶ Id. at ¶ 34.

⁷ Id. at ¶ 40. Citing the pending assignment application, Family argued that the ALJ should refrain from revoking Family's licenses based on three exceptions to the Commission's general policy prohibiting the target of a revocation proceeding from selling or assigning a

On August 28, 2001, Family filed with the Commission exceptions to the Summary Decision. Specifically, Family challenged both the ALJ's revocation of the Station licenses and dismissal of the Transfer Application. On March 22, 2002, the Commission upheld the ALJ's revocation of the Station Licenses but nevertheless remanded the proceeding back to the ALJ to further consider whether the Transfer Application should be dismissed.⁸ Holding that summary judgment was not warranted, the Commission found a genuine issue of material fact as to whether Family would continue to be controlled by Mr. James if ownership of Family was transferred to his children.⁹ Specifically, the Commission held that a transfer of control of Family should be considered despite the pending revocation proceeding provided that Family could demonstrate that the individuals responsible for Family's violations of the Commission's rules would not benefit from the transfer of control. According to the Commission,

[i]n circumstances ensuring the future lawful operation of these stations in the public interest at the sole discretion of persons having no responsibility for the licensee's previous violations and lack of candor and in a manner that does not improperly benefit any individual responsible for Family's previous performance, there could be a basis to find that the proposed transfer of control would serve the public interest despite the usual prohibition against a transfer by a licensee involved in a revocation proceeding.¹⁰

Prior to the commencement of the ALJ's hearing on remand to address the Transfer Application, Family filed, on February 24, 2003, a Petition for Extraordinary Relief requesting the ALJ to suspend the revocation proceeding to permit Family to file and prosecute an application ("*Assignment Application*") seeking Commission consent to assign the Station

broadcast station license: (1) the Minority Distress Sale Policy; (2) the *Second Thursday Doctrine*; and (3) the holding in *Petroleum v. Nashby Corporation*, 10 F.C.C. Rcd 6029 (Rev. Bd. 1995), where renewal was granted upon the condition that the disqualified wrongdoer would transfer his stock to an unrelated person. *Id.* at ¶¶ 35 – 38. Raising doubts about the independence of the proposed transferees, the children of Mr. James, the ALJ rejected Family's arguments. The ALJ held that Family's proffered exceptions to the Commission's general rule against transferring control of broadcast licenses subject to revocation proceedings do not apply where the proposed transfer, in fact, does not constitute a de facto transfer of control. *Id.* at ¶ 40. The ALJ further noted that the *Second Thursday* doctrine was not applicable because, at the time, Family was not a debtor in a pending bankruptcy proceeding as required by the doctrine. *Id.* at ¶ 39.

⁸ *Family Broadcasting, Inc.*, Memorandum Opinion and Order and Hearing Designation Order, 17 FCC Rcd 6180 (2002).

⁹ *Id.* at ¶ 29.

¹⁰ *Id.* at ¶ 33.

licenses to Caledonia under the Commission's minority distress sale policy.¹¹ The ALJ granted the Petition, noting that the Commission's Enforcement Bureau favored "holding the hearing in abeyance to permit Commission review of the transaction and a possible grant of authority to make the assignments."¹² Family subsequently filed the Assignment Application on March 13, 2003, requesting consent to assign the Stations to Caledonia for 75% of their value consistent with the Commission's minority distress sale policy.¹³ Explaining that the "distress sale policy is not to be rigidly applied," the Audio Division ("**Division**") dismissed the Assignment Application by letter decision on October 27, 2003.¹⁴ According to the Division, Family failed to demonstrate that "the public interest would be served by permitting it . . . to receive money from the sale of [the Stations]." On November 20, 2003, Family filed with the Commission an application for review of the Division's letter decision. On January 17, 2006, Family and Caledonia withdrew the application for review in preparation for Family's filing of the instant Application. The Commission dismissed Family's application for review on February 6, 2006.¹⁵

The ALJ continued to hold the revocation proceeding in abeyance at the request of Family while Family's application for review of the Division's dismissal of the Assignment Application was pending. On March 16, 2004, the ALJ resumed consideration of the Transfer Application on remand from the Commission. Subsequently, on May 12, 2005, the ALJ issued an Initial Decision on Remand ("**Initial Decision**") in which the ALJ dismissed the Transfer Application and revoked the Station licenses.¹⁶ The ALJ concluded that the proposed transferees, Mr. James' children, were not capable of operating the Stations independent of Mr. James and thus that transfer of control of Family to the children would not result in a change in *de facto* control of Family warranting dismissal of the Station revocation.¹⁷ On June 9, 2005, Family filed exceptions to the Initial Decision and the Enforcement Bureau ("**Bureau**") filed a reply to Family's exceptions on June 22, 2005. The Commission has not yet acted on Family's exceptions.

¹¹ Family Broadcasting, Inc., Order, FCC 03M-09, EB Docket No. 01-39 (ALJ rel. Feb. 26, 2003) (granting Family's Feb. 24 Petition for Extraordinary Relief).

¹² Id. at 1.

¹³ FCC File No. BALH-20030304AAW.

¹⁴ Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Daniel A. Huber, Esq., Counsel for Family, dated Oct. 27, 2003.

¹⁵ Family Broadcasting, Inc., Order, DA 06-291 (AD rel. Feb. 6, 2006) (dismissing at Family's request the application for review filed by Family on November 20, 2003 of assignment applications FCC File Nos. BALH-20030304AAW/BAL-20030304AAX).

¹⁶ Family Broadcasting, Inc., Initial Decision on Remand of Chief Administrative Law Judge Richard L. Sippel, FCC 05D-01, EB Docket No. 01-39 (ALJ rel. May 13, 2005).

¹⁷ Id. at ¶¶ 54-60.

B. Bankruptcy Proceeding

Family initially filed for Chapter 11 bankruptcy protection on April 13, 2005 in the United States Bankruptcy Court for the District of St. Croix ("**Court**")¹⁸ and subsequently filed a *pro forma* assignment application on May 13, 2005 seeking Commission consent to assign the Station licenses to Family as debtor-in-possession.¹⁹ Family's *pro forma* assignment application was granted on February 13, 2006.²⁰

On December 21, 2005, Family filed its First Amended Plan of Reorganization ("**Plan**") with the Court.²¹ The Plan, which has not yet been confirmed by the Court,²² calls for Family to sell to Caledonia upon Commission approval all tangible and intangible assets related to the Stations. The Plan also calls for Caledonia to operate the Stations pursuant to a time brokerage agreement ("**TBA**") during the pendency of the Commission's consideration of the instant Application. The purchase price paid by Caledonia for the Stations (and 75% of the net proceeds from Caledonia's operation of the Stations under the TBA during the pendency of the

¹⁸ In re Family Broadcasting, Inc., Case No. 1-05-0004-BM (Bankr. D. V.I.).

¹⁹ FCC File No. BAL-20050513ABQ. See Broadcast Applications, Public Notice, Report No. 25989 (rel. May 20, 2005).

²⁰ FCC File No. BAL-20050513ABQ. See Broadcast Applications, Public Notice, Report No. 46174 (rel. February 16, 2006).

²¹ First Amended Plan of Reorganization Filed by Family Broadcasting, Inc. and First Amended Disclosure Statement to Accompany Plan ("**Disclosure Statement**"), filed Dec. 21, 2005 (Case No. 1-05-0004 BM), In re Family Broadcasting, Inc. (Bankr. D. V.I.). On September 21, 2005, Family submitted its First Plan of Reorganization ("**First Plan**"), pursuant to which Family sought to assume the asset purchase agreement under which Family had agreed to assign the Stations to Caledonia upon FCC approval and the TBA under which Caledonia would operate the Stations pending Commission consideration of the instant Application. See Plan of Reorganization Filed by Family Broadcasting, Inc. and Disclosure Statement to Accompany Plan, filed Sept. 21, 2005 (Case No. 1-05-0004 BM), In re Family Broadcasting, Inc. (Bankr. D. V.I.). The Court required Family to amend and refile the First Plan to provide formal notice to Family's creditors of Family's proposed sale of the Stations to Caledonia. See Order of Court, issued Nov. 21, 2005 (Case No. 1-05-0004 BM), In re Family Broadcasting, Inc. (Bankr. D. V.I.).

²² Family Broadcasting is currently awaiting Court approval of the Disclosure Statement. Upon approval of the Disclosure Statement, the Court will schedule a hearing to address confirmation of the plan. A copy of the Plan is attached hereto and the applicants will provide the Commission with notice of any additional activity by the Bankruptcy Court with respect to the Plan.

Commission's review of the instant Application) are required to be distributed to Family's creditors by a disbursing agent under the supervision of the Court.²³

No portion of the purchase price is to be retained by Family, any Family stockholder, any family member of Mr. James, or any business associate of Mr. James (other than the administrative claims of Family's professional advisors, such as Family's bankruptcy counsel). Therefore, consistent with the Commission's *Second Thursday* doctrine, which is further discussed below, no party with an ownership interest in Family will benefit in any way from the proposed assignment of the Stations to Caledonia or have an interest in, or control over, the Stations following consummation of the Plan.²⁴

C. Description of Assignee

The proposed assignee, Caledonia, is a corporation organized under the laws of the U.S. Virgin Islands. Kevin Rames, who controls Caledonia, owns and votes 51% of the issued and outstanding shares of Caledonia common stock and serves as Caledonia's President and Chairman of Caledonia's board of directors. Although born in New York, Mr. Rames is a fifth generation Virgin Islands resident. He is a practicing attorney and successful entrepreneur with interests in real estate and a ferry company in the Virgin Islands. He currently is developing a Virgin Islands resort, which will include a hotel, casino, golf course, retail space, and residential homes. Mr. Rames is a former president of the St. Croix Chamber of Commerce and is the President and Chairman of the Beacon Schools of the Virgin Islands Inc., an IRS 501(c)(3) after school program and safe haven that has served the education needs of thousands of children

²³ Specifically, the Plan divides Family's creditors and equity holders into four classes. Class one creditors, which hold allowable administrative claims, will be paid by Caledonia on the thirtieth day after confirmation of the Plan by the Court. Class two creditors, which hold priority tax claims, will be paid a *pro rata* share of 75% of the net proceeds from Caledonia's operation of the Stations on the thirtieth day of each of the first eleven months following confirmation of the Plan. If, on the thirtieth day of any of the first eleven months following confirmation of the Plan, class two creditors have been paid in full, then, on the thirtieth day, class three creditors, which includes all holders of unsecured claims, will be paid a *pro rata* share of the remaining balance of 75% of the net proceeds from Caledonia's operation of the Stations. Any amounts owed to class two and class three creditors upon Commission approval of the instant Application and sale of the Stations to Caledonia will be paid out of the purchase price, which is capped at the outstanding amount owed to the creditors upon consummation of the sale of the Stations to Caledonia. See Plan, Articles I and II, at 1-2. Further, all amounts to be paid to Family's creditors under the Plan will be paid by Caledonia to, and disbursed by, a disbursing agent under the supervision of the Court. See Plan, Article IX, at 3.

²⁴ In the event that the Commission does not approve the instant Application within one year of the date on which the Court confirms the Plan, Family will acquiesce to the revocation of the Station licenses by the Commission and no Family creditors will receive any further payment in satisfaction of Family's outstanding debt. See Plan, Articles IV, at 2-3.

throughout the Territory during his ten-year tenure. Janis Rames, Mr. Rames's wife, serves as Caledonia's Vice President and Treasurer and as a Director. Mr. and Mrs. Rames's address is 2111 Company Street, Suite 3, Christiansted, St. Croix, Virgin Islands, 00820.

Jonathan Cohen and his wife, Amanda Friedman, each own and vote 24.5% of the issued and outstanding shares of Caledonia common stock. Mr. Cohen is the owner and operator of three Virgin Island commercial radio stations. He is the President, Director, and sole shareholder of Radio 95, Inc., licensee of WJKC(FM), Christiansted, V.I. (Facility ID No. 54468); JKC Communications of the Virgin Islands, Inc., licensee of WVIQ(FM), Christiansted, V.I. (Facility ID No. 74457); and Clara Communications Corporation, licensee of WMNG(FM), Christiansted, V.I. (Facility ID No. 81515).²⁵ Ms. Friedman also serves as the Secretary and a Director of Caledonia. Mr. Cohen's and Ms. Friedman's address is 5020 Anchor Way, Christiansted, St. Croix, Virgin Islands, 00820. Mr. and Mrs. Rames, Mr. Cohen, and Ms. Friedman are all U.S. citizens and residents of St. Croix. No other individual or entity holds an attributable interest in Caledonia.

On April 12, 2005, Caledonia and Family entered into an Asset Purchase Agreement and a Time Brokerage Agreement. Copies of both agreements are attached to the instant Application as Exhibits 4 and 14, respectively.

III. Grant of the Application is Consistent With and Supported By the *Second Thursday* Doctrine and Other Public Interest Considerations

Grant of the instant Application is in the public interest under the Commission's longstanding *Second Thursday* doctrine, which is intended to protect the innocent creditors of a malfeasant broadcast licensee that causes the Commission to revoke its broadcast station licenses. In *Second Thursday Corp.*, the Commission established the principle that a licensee may be permitted to assign a broadcast station license even if the license is the subject of a pending revocation proceeding,²⁶ provided that (i) the licensee is in bankruptcy and (ii) the assignment is part of a station sale that is for the benefit of the licensee's innocent creditors and

²⁵ Please see Exhibit 15 to the instant Application for a demonstration that, when considered in conjunction with his proposed interest in the Stations, Mr. Cohen's other attributable radio interests in the U.S. Virgin Islands will be fully consistent with the Commission's radio contour overlap rule. See 47 C.F.R. § 73.3555(a).

²⁶ *LaRose v. FCC*, 494 F.2d 1145, 1148 (D.C. Cir. 1974). In *LaRose*, as in the present case, the Commission denied an assignment application for failure to satisfy the *Second Thursday* doctrine and effectively revoked the underlying station license. In each case, the applicants refiled their assignment application while an appeal of the revocation was pending and after conforming the assignment application to the Commission's *Second Thursday* policy. The D.C. Circuit held in *LaRose* that the Commission abused its discretion by refusing to consider the newly filed assignment application.

that does not significantly benefit the licensee or any malfeisor with an attributable interest in the licensee.²⁷

The United States Court of Appeals for the District of Columbia ("*D.C. Circuit*"), which has expressly endorsed the *Second Thursday* doctrine, explained that the doctrine is intended to "accommodate[] the policies of the federal bankruptcy law with those of the Communications Act."²⁸ According to the D.C. Circuit, the doctrine "requires an *ad hoc* balancing of the possible injury to regulatory authority that might flow from wrongdoers' realization of benefits against the public interest in innocent creditors' recovery from the sale and assignment of the license to a qualified party."²⁹ The D.C. Circuit explained that, consistent with the "public interest in protecting innocent creditors, the Commission will approve the sale and assignment of [a] bankrupt's license" when the assignment does not undermine the Commission's responsibility to ensure that broadcast stations are operated in conformance with the Communications Act.³⁰

As demonstrated herein, both of the *Second Thursday* doctrine requirements are fully satisfied by the instant Application thereby obviating the need for the Commission to undertake any type of *ad hoc* balancing of possible regulatory harms caused by application of the *Second Thursday* doctrine to the instant Application. First, Family currently is in the midst of a pending Chapter 11 bankruptcy proceeding under the direct supervision of the Court. Second, neither Family, nor any entity with an ownership interest in Family, stand to benefit from the proposed assignment in any way. Family and its principals will not hold any ownership interest in, or control over, the Stations following the consummation of the proposed assignment and none of the debt that will be repaid as a result of the proposed sale of the Stations is personally guaranteed by the malfeasors.³¹

²⁷ *Second Thursday Corp.*, Memorandum Opinion and Order, 22 F.C.C. 2d 515, reconsideration granted, 25 FCC 2d 112 (1970); see also *LaRose* at 1148 (holding that despite the general rule that an assignment application will not be granted "during the pendency of a hearing involving the character qualifications of a licensee, the Commission will permit such upon a showing that alleged wrongdoers will derive no benefit, either directly or indirectly, from the sale or will derive only a minor benefit which is outweighed by the equities in favor of innocent creditors").

²⁸ *LaRose*, at 1147 n.2.

²⁹ *Id.* at 1149; see also *Second Thursday*, 25 FCC 2d 1122, at ¶ 7 (holding that "the public interest considerations favoring a grant [of the assignment] outweigh any unfavorable considerations").

³⁰ *Id.* at 1148.

³¹ See *New South Broadcasting, Inc.*, Order, 8 F.C.C. Rcd. 1272, ¶ 2 (1993) (granting assignment of a broadcast station license under the *Second Thursday* doctrine to the station's general manager and three percent owner because he was not the malfeisor and the malfeisor would receive "only an incidental benefit from the elimination of his potential liability through the bankruptcy"); *Shell Broadcasting Inc.*, Order, 38 FCC 2d. 929, ¶ 11 (1973) (holding that the

In addition to not causing any regulatory harms, grant of the Application is consistent with the public interest for several additional reasons. First, absent assignment of the Station licenses for value, Family's creditors are likely to receive no significant compensation in Family's bankruptcy proceeding—a result that the *Second Thursday* doctrine was intended to prevent. Other than the Station licenses, Family holds very few assets of any substantial value from which Family's creditors can be repaid. By contrast, upon Commission approval of the instant Application, Family's innocent creditors will be repaid in full by Caledonia. Importantly, Family's two largest creditors are the Internal Revenue Service and the Virgin Islands Bureau of Internal Revenue. The D.C. Circuit previously noted that the government has a special interest in assuring that it is repaid outstanding tax liabilities.³²

Second, unless the Commission approves the assignment of the Station licenses to a qualified assignee under the *Second Thursday* doctrine, the Stations will go dark for several years, at minimum, and the AM station may never resume operation. The Commission has previously held that assuring the continued operation of a station is a public interest benefit that supports assignment under the *Second Thursday* doctrine of a station subject to a revocation proceeding.³³

If the Station licenses are revoked, WSTX-FM's allotment will become an unlicensed allotment in the Commission's FM Table of Allotments subject to auction during the Commission's next FM auction. The next FM auction is not likely to be held until 2007 at the earliest and a construction permit is not likely to be issued until 2008.³⁴ The permittee will then have until some time in 2011 to commence operations of the new FM station in Christiansted.³⁵

indirect benefit to the malfeasant licensee of the discharge of personally guaranteed debt equivalent to approximately 8% of the purchase price of the station was "outweighed by the equities in favor of innocent creditors").

³² See *LaRose* 494 F.2d 1145, 1150 n. 5 (noting that one of the innocent creditors is the federal government). Under the Plan, initial payments to Family's class one creditors, which includes the Internal Revenue Service and the Virgin Islands Bureau of Internal Revenue, will commence immediately upon the approval of the Plan by the Court and continue during the pendency of the Commission's review of the instant Application.

³³ *Second Thursday Corp.*, 22 FCC 2d 515 at ¶ 13 (noting that "the resumption of broadcast service ... [is a] favorable public interest consideration[] which support[s] a grant" of a *Second Thursday* assignment application).

³⁴ Although the Commission intends to hold auctions more frequently in the future, the last FM broadcast auction was completed on November 23, 2004, more than four years after the initial public notice regarding the auction. See generally FM Broadcast Auction Scheduled for February 21, 2001, Public Notice, DA 00-2171, Report No. AUC-00-37-A (WTB/MMB rel. Sept. 25, 2000), FM Broadcast Construction Permits Auction Closes, Public Notice, DA 04-3694, Report No. AUC-04-37-P (WTB/MMB rel. Dec. 1, 2004).

³⁵ See 47 C.F.R. §73.3598 (a).

The outlook for WSTX(AM) resuming service is even bleaker. Upon revocation of WSTX(AM)'s license, the AM allotment effectively will disappear thereby enabling other AM stations operating on adjacent channels to seek Commission consent to modify their operating parameters to fill the spectrum "hole" left by WSTX(AM)'s disappearance. Even if, once adjacent stations have modified their operating parameters, sufficient space remains to license a new AM station to replace WSTX(AM), such a station license is required by Commission rules to be assigned in the context of an AM filing window. Due to the backlog of new station and major modification applications caused by the unanticipated popularity of the most recent AM filing window, it is unclear when the next AM filing window will occur.

By contrast, Caledonia is prepared to continue operation of the Stations uninterrupted and, further, to invest substantial sums to improve the Stations' facilities upon Commission grant of the Application. Caledonia is an ideal licensee for the Stations. Organized under the laws of the U.S. Virgin Islands, Caledonia is a minority-controlled small business.³⁶ Further, Caledonia is owned entirely by U.S. Virgin Island residents, one of whom, Mr. Cohen, has a long and unblemished track record of successfully operating broadcast radio stations in the U.S. Virgin Islands. Caledonia will continue the news/talk format that has characterized WSTX(AM) for a generation, with programming that focuses on the social, political, economic, and spiritual issues of particular concern to the people of the U.S. Virgin Islands. The music interludes on WSTX(AM) are primarily the "Kaiso" or "Calypso" music native to the Eastern Caribbean, along with the "Quelbe" music that is the indigenous folk music of St. Croix. WSTX-FM will continue its "all reggae" format, which focuses on the positive lyrics of the "roots music" subgenre of reggae, with an emphasis on the exposition of locally grown talent. Thus, Caledonia's ownership of the Stations supports several of the Commission's policy objectives with respect to broadcast station ownership—encouraging minority ownership of broadcast stations, promoting control of broadcast stations by small businesses, and increasing local ownership and control of broadcast stations.³⁷

³⁶ Kevin A. Rames, Esq. is an African-American with Afro-Caribbean roots who has practiced law exclusively in the Virgin Islands since 1985. Caledonia was organized for the sole purpose of operating the Stations.

³⁷ See 47 USC § 257(b) (directing the Commission to promote policies favoring diversity of media voices and economic competition), Broadcast Localism, Notice of Inquiry, MB Docket No. 04-233, FCC 04-129 (rel. July 1, 2004) ("As with competition and diversity, localism has been a cornerstone of broadcast regulation for decades."), Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, Policy Statement, 92 FCC 849, 856 (1982) (reaffirming the commitment to diversifying media ownership as expressed in the 1978 Policy Statement and initiating new programs to increase the representation of minorities in media ownership).

IV. Conclusion

For the reasons set forth herein, the parties respectfully request the Commission to grant the instant Application and dismiss the pending revocation proceeding as moot. Grant of the Application is fully consistent with and supported by the Commission's *Second Thursday* doctrine and further supported by additional public interest considerations.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ST. CROIX

In re:)
FAMILY BROADCASTING, INC.)
Debtor) Case No. 1-05-00004 BM
) (Chapter 11)

**FIRST AMENDED PLAN OF REORGANIZATION FILED BY
FAMILY BROADCASTING, INC.**

(Dated: December 21, 2005)

Family Broadcasting, Inc. ("Family"), the Debtor, proposes the following Plan of Reorganization ("Plan"):

Article I

DIVISION INTO CLASSES

For purposes of this Plan, the claims of creditors and the interests of equity holders of the Debtor are divided into the following classes:

Class 1: Administrative expenses, as allowed and entitled to priority under 11 U.S.C.A. § 507(a)(1).

Class 2: Priority tax claims, as allowed and entitled to priority under 11 U.S.C.A. § 507(a)(7).

Class 3: General unsecured claims, as allowed.

Class 4: Equity interest holders.

Article II

TREATMENT OF CLASSES

Class 1: On the thirtieth (30th) day after confirmation, Class 1 claimants will be paid in full the allowed amount of their claims.

Class 2: On the thirtieth (30th) day of each of the first eleven months following confirmation of the Plan, the Class 2 claimants holding allowed claims will be paid *pro rata* seventy-